

# BOARD OF COUNTY COMMISSIONERS

## INTER-OFFICE MEMORANDUM

To: Honorable Chairman and Members of the Board of County Commissioners  
Parwez Alam, County Administrator

From: Herbert W.A. Thiele, Esq.  
County Attorney's Office

Date: October 3, 2003

Subject: Stormwater Utility Management Program

At the regularly scheduled meeting of the Board of County Commissioners held on September 16, 2003, the Board directed staff to prepare for the Board's consideration a report identifying the authority and methodology for the creation, operation and funding of a stormwater management program. Further, the Board requested that such analysis determine whether the County had the authority to effectuate the creation of a stormwater utility management program to be operated on a county-wide basis, assuming either the City of Tallahassee did not wish to voluntarily participate or that the Board deemed it appropriate to operate such management program unilaterally.

In response to the first issue presented we offer the following for your consideration. Obviously, stormwater runoff may cause flooding and threatens water quality in urbanized areas. Section 403.031(16), Florida Statutes (2002), defines a stormwater management system as:

a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system.

Therefore, stormwater must be collected, conveyed, treated, and disposed of to prevent and reduce flooding and pollution. In fact, Florida law requires local governments to establish storm water management programs. Section 163.3202(2)(d), Florida Statutes, provides that each county and each municipality shall adopt or amend and enforce land development regulations consistent with and implement their adopted comprehensive plan. Specifically, land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall as a minimum; "[r]egulate areas subject to seasonal and periodic flooding and provide for drainage and stormwater management." Section 163.3202(2)(d), Florida Statutes. Further, Section 403.0891, Florida Statutes (2002), generally provides that local governments shall have the responsibility for the development of mutually compatible stormwater management programs.

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To fund such programs, local governments may "[c]reate one or more stormwater utilities and adopt stormwater utility fees sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3)." See Section 403.0893(1), Florida Statutes (2002).

A stormwater utility is defined as:

the funding of a stormwater management program by assessing the cost of the program to the beneficiaries based on their relative contribution to its need. It is operated as a typical utility which bills services regularly, similar to water and wastewater services. Section 403.031(17), Florida Statutes (2002).

Counties, as well as municipalities are permitted to "create one or more stormwater utilities and adopt stormwater utility fees sufficient to plan, construct, operate, and maintain stormwater management systems...". Section 403.0893(1), Florida Statutes (2002). Counties and municipalities may "establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain stormwater management systems... or [c]reate, alone or in conjunction with counties, municipalities, and special districts pursuant to the Interlocal Cooperation Act, s.163.01, one or more stormwater management system benefit areas." Section 403.0893(2)-(3), Florida Statutes (2002).

Thus, pursuant to the authority of Section 403.0893, Florida Statutes, it is permissible for the County to create either a stormwater utility or a stormwater management system benefit area. The main difference between the stormwater utility and stormwater management system benefit area can be found in the funding capabilities of each.

Stormwater utilities are permitted to adopt utility fees sufficient to fund its operation, whereas stormwater management system benefit areas are funded through the use of special assessments. Special assessments adopted for the operation of a stormwater management system benefit area may be collected using the provisions of Section 197.3632, Florida Statutes (2002) for uniform method of the levy, collection and enforcement of non-ad valorem assessments.

Stormwater user fees maintain certain advantages over special assessments, including but not limited to, the availability of imposing fees upon State agencies. Special assessments on the other hand may not be levied against state property. Absent a statute specially authorizing, either explicitly or by necessary implication, special assessments on state property are not permissible. See *City of Gainesville v. State Department of Transportation*, 778 So.2d 519, 521 (Fla. 1<sup>st</sup> DCA) quoting *Blake v. City of Tampa*, 156 So.2d 97, 99 (Fla. 1934). Therefore, the initial question which needs to be addressed by the Board concerns the creation of a stormwater management system, whether the Board wishes to create a stormwater utility or a stormwater management system benefit area.

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In response to the second question presented by the Board, specifically whether the County may unilaterally create a stormwater utility implementing and funding same, on a county-wide basis, we present the following. Article VIII, Section 1, (g) of the State Constitution provides that:

counties operating under county charters shall have all powers of local self-government not inconsistent with general law or with special law approved by a vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. **The charter shall provide which shall prevail in the event of a conflict between county and municipal ordinances. (Emphasis added).**

Section 1.6 of the Leon County Home Rule Charter provides that:

except as otherwise provided by law or this charter, municipal ordinances shall prevail over county ordinances to the extent of any conflict within the boundaries of the municipality. To the extent that a county ordinance and a municipal ordinance shall cover the same subject without conflict, then both the municipal ordinance and the county ordinance shall be effective, each being deemed supplemental to the other.

Based upon the above reading of the State Constitution and County Charter, the creation, implementation and funding of a county-wide stormwater utility would require either the City of Tallahassee consenting to a County-wide ordinance, thereby repealing any City ordinances in conflict therewith. The second alternative would consist of a charter amendment, specifically amending Section 1.6, of the Leon County Home Rule Charter, to provide that County ordinances would prevail over municipal ordinances to the extent of any conflict with same within boundaries of a municipality. Naturally, such amendment could be limited to ordinances dealing solely with stormwater utility issues.

We hope this brief analysis provides a proper foundation for the Board providing appropriate direction in regard to this issue. Naturally, should you need additional information or have any questions regarding the contents of this memorandum please contact our office at your convenience.

HWAT/PTK/cc

cc: Vince Long, Assistant County Administrator  
Alan Rosenzweig, Director of Office of Management and Budget  
Tony Park, Director of Engineering Services  
Teresa Heiker, Chief of Stormwater Engineering